

Student loans - hardship discharge
11 U.S.C § 523(a)(8)(B)

Talley v. California Student Aid. Comm. et al. 96-6094-fra
Main Case: In re Aleta Talley 695-64344-aer7

3/26/97

FRA

Unpublished

Plaintiff is a 43 year old single parent raising a teenage son. She filed this adversary proceeding to obtain a hardship discharge of her student loans under § 523(a)(8)(B). The bulk of the loans were obtained to allow the Plaintiff to attend law school. Even though she was on academic probation each of the three years she was in law school, she was allowed to continue until, two weeks prior to the end of the third year, she was told she would not be allowed to graduate. After law school she obtained employment and presently earns approximately \$29,000 per year which is close to the maximum she could be expected to earn given her education and capabilities. Total loans subject to this proceeding equal \$80,204 with an approximate monthly payment of \$940.

The court applied the Brunner test to determine that the aggregate of Plaintiff's obligations produced an undue hardship. The court interpreted § 523(a)(8)(B), however, to require discharge under that provision of only that portion of the student loans which were an undue hardship. Because the Plaintiff has the present and future ability to make monthly payments of \$357 without undue hardship, the court determined a nondischargeable aggregate loan amount of \$28,793 based on an 8.5% interest rate with payment over ten years. The aggregate loan in excess of that amount is dischargeable with the dischargeable amount to be allocated pro rata to each of the three loan providers.

1
2
3
4
5
6
7
8
9
10 UNITED STATES BANKRUPTCY COURT
11 FOR THE DISTRICT OF OREGON
12

13 IN RE)
14 ALETA J. TALLEY,) Case No. 695-64344-aer7
15 _____ Debtor.)
16 ALETA J. TALLEY,)
17 Plaintiff,)
18 vs.) Adversary No. 96-6094-aer
19 CALIFORNIA STUDENT AID COMM.;)
20 EDUSERVE TECHNOLOGIES, INC.;)
21 NORTHSTAR GUARANTEE, INC.;)
22 PORTLAND STATE UNIVERSITY;)
23 OREGON STATE BAR; and HEMAR)
24 INSURANCE CORP. OF AMERICA,)
25 _____ Defendants.) MEMORANDUM OPINION
26

27 The Plaintiff filed this adversary proceeding asking the court
28 to determine that her student loans are dischargeable under 11
29 U.S.C. § 523(a)(8)(B). For the reasons that follow, the court

1 finds that the Plaintiff's student loans are partially
2 dischargeable.

3 I. FACTS

4 The Debtor / Plaintiff in this case is a 43 year old woman who
5 is the single parent of a 13 year old son. She attended Portland
6 State University and obtained a B.S. with high honors in
7 administration of justice in 1990. She chose this major intending
8 eventually to attend law school. While at Portland State, she
9 received welfare and student loans and lived in subsidized housing.
10

11 The Debtor thereafter attended Willamette Law School on a full
12 scholarship for three years. She was taken off welfare and relied
13 solely on student loans for her living expenses during this period.
14 Despite being on academic probation each of the three years she was
15 in law school, she was allowed to continue through her third year
16 when, two weeks prior to graduation, she was advised that she was
17 not eligible for a degree. Her petition for reinstatement was
18 denied. Evidence was submitted to the effect that after leaving
19 law school the Debtor suffered from clinical depression. This was
20 offered as an explanation for the Debtor's inability to manage her
21 finances. The Debtor testified that due to her state of mind after
22 law school, she is unable to recollect whether she attempted to
23 obtain a deferment of her student loans.
24

25 After law school, the Debtor obtained a job with the City of
26 Salem as a community service counselor and later obtained a
position with the same employer as the coordinator for a gang

1 intervention project. In October, 1996, she obtained a position
2 with the Marion County Children & Families Commission as a cultural
3 competency coordinator. That position was made full time in
4 December, 1996.

5 The Debtor's gross income for the last four years is as
6 follows: \$8,076 for 1993, \$21,277 for 1994, \$26,259 for 1995, and
7 \$29,008 for 1996. In addition, the Debtor is supposed to receive
8 child support of \$267 per month, but receipt is described as
9 sporadic. The Debtor testified that she has applied for other
10 positions, at least to the extent of applying for a job as
11 Executive Director of the Oregon Commission on Black Affairs, but
12 she was turned down. That position would have paid between \$24,000
13 and \$32,000. A career counselor employed by Willamette University
14 testified that the Debtor's current wage and job status are
15 appropriate for her education and capabilities and that it would be
16 "extremely difficult" to do better than \$30,000 a year with the
17 Debtor's degree and experience level.

18
19 Only three of the defendants are active in this case, Portland
20 State University (debt of \$5,483.95), Hemar (debt of \$18,656.39),
21 and North Star Guarantee (debt of \$56,063.82) for total student
22 loans subject to this dischargeability proceeding of \$80,204.16.
23 The remaining defendants either made no appearance or stipulated to
24 judgment. The Debtor feels she can make payments of \$150 per month
25 toward these debts.
26

1 II. ANALYSIS

2 11 U.S.C. 523(a) (8) reads as follows:

3 (a) A discharge under section 727, 1141,
4 1228(a), 1228(b), or 1328(b) of this title does
5 not discharge an individual debtor from any
6 debt—

7 (8) for an educational benefit overpayment or
8 loan made, insured or guaranteed by a
9 governmental unit, or made under any program
10 funded in whole or in part by a governmental
11 unit or non-profit institution, or for an
12 obligation to repay funds received as an
13 educational benefit, scholarship or stipend,
14 unless—

15 (A) such loan, benefit, scholarship,
16 or stipend overpayment first became
17 due more than 7 years (exclusive of
18 any applicable suspension of the
19 repayment period) before the date of
20 the filing of the petition; or

21 (B) excepting such debt from
22 discharge under this paragraph will
23 impose an undue hardship on the
24 debtor and the debtor's dependents;

25 None of the debts in question came due more than seven years
26 from the petition date. The Debtor argues, however, that requiring
her to pay back the loans would impose an undue hardship on her and
her son and that the loans should consequently be dischargeable
under § 523(a) (8) (B). This presents the court with the task of
determining whether a debtor who has the ability to pay some of her
student loan debts, but perhaps not all, should have her
obligations reduced to the extent necessary so as not to impose an
undue hardship.

1 A. Undue Hardship

2 A test for determining what constitutes undue hardship was
3 established by the Second Circuit in Brunner v. New York State
4 Higher Education Services, Corp, 831 F.2d 395 (2d Cir. 1987) and
5 adopted in this District in In re Rosen, 179 B.R. 935 (Bankr. D.
6 Or. 1995). The test as adopted in this District requires the
7 debtor to make a three-part showing: 1) that the debtor's current
8 financial status does not permit her to maintain a minimal standard
9 of living for herself and her dependents if she is forced to repay
10 the loan; 2) that the debtor's financial status is likely to
11 persist for a significant portion of the repayment period; and 3)
12 that the debtor made a good faith effort to repay the loan. Rosen
13 at 940.

14
15 1. Current Financial Status of Debtor

16 The Debtor submitted a monthly financial statement showing
17 monthly net income, including child support, of \$2,331.77. Monthly
18 expenses of \$2,344 are listed. The Defendants have made objections
19 to several of the Debtor's expenditures as being excessive; the
20 total of these objections is in the \$300 to \$500 range. However,
21 even if the monthly expenses are reduced by the amounts objected
22 to, the debtor still has insufficient income to make monthly
23 payments of approximately \$940 on her outstanding student loans.

24 The Debtor must show that she cannot pay the loan obligations
25 and still maintain a minimal standard of living. Brunner, 831 F.2d
26 at 396. The Debtor does not live a lavish lifestyle, although there

1 may be some expenses that could be reduced. She has attempted to
2 provide an adequate home and life for her son. It should not be
3 necessary to drive the Debtor and her son into poverty or public
4 assistance to make student loan payments, as long as the
5 expenditures which are made can be justified given Congress' intent
6 that student loans be generally nondischargeable absent undue
7 hardship. Given the Debtor's income and expenses, her current
8 financial status is clearly inadequate to make the payments
9 required without undue hardship.
10

11 2. Debtor's Future Financial Status

12 It is difficult to predict what may happen in the future, but
13 the court believes that the debtor has met her burden of showing
14 that her future financial status is unlikely to improve during much
15 of the repayment period to the extent that full payment may be made
16 on the student loans without undue hardship of the Debtor. A
17 career counselor testified that it would be "extremely difficult"
18 for the Debtor to earn more than \$30,000 with a degree in judicial
19 administration at her experience level. She stated that with "time
20 and luck" better jobs could be obtained. The Debtor recently
21 applied for a position which would have paid an annual salary of up
22 to \$32,000, but was turned down for the job. Given the evidence
23 presented, the court feels that the Debtor's financial situation
24 can be expected to persist for much of the repayment period.
25

26 3. Good Faith Effort to Repay Loans

1 Approximately \$1,700 has been paid toward the Debtor's student
2 loan obligations, much of it by way of garnishment after the debtor
3 defaulted on the loans. The debtor testified that she suffered
4 from clinical depression following law school and gave this reason
5 to at least partially explain why she was unable to deal with her
6 finances. Given her state of mind at the time, she testified that
7 she cannot remember whether she requested any deferments on her
8 loan obligations due to her inadequate financial condition. Once
9 the debtor became 90 days delinquent on her loans, she no longer
10 qualified for loan consolidation which would have had the effect of
11 reducing her monthly payment, but extending the payment over more
12 years. See 34 C.F.R. § 685.200(b)(1)(vii)(A)(1). While much of the
13 payments made on the loan obligations were by way of garnishment,
14 the fact that garnishments were being made reduced the Debtor's
15 ability to make voluntary payments. Given the equitable nature of
16 bankruptcy in general, the court feels that the Debtor has met her
17 burden with respect to the third-prong of the Brunner/Rosen test.

18
19 B. Partial Discharge

20 While repayment of the entire student loan obligation would
21 constitute an undue hardship for the Debtor, the Debtor does have
22 the present and future ability to repay part of the obligation
23 without undue hardship. Some courts have held that discharge of
24 student loan obligations is an all or nothing proposition, with the
25 Bankruptcy Code giving the court no power to grant a partial
26 discharge. See In re Skaggs, 196 B.R. 865, 866-867 (Bankr. W.D.

1 Okla. 1996) ("[T]he court's authority to determine dischargeability
2 of student loans is limited strictly to a determination of whether
3 a discharge of the entire debt is required."). Other bankruptcy
4 courts, including courts in this state, however, have held that the
5 bankruptcy court has the power to grant a partial discharge or
6 fashion other relief consistent with the Code's broad grant of
7 equitable powers. See In re Littell, 6 B.R. 85 (Bankr. D.Or.
8 1980); In re Raimondo, 183 B.R. 677 (Bankr. W.D. N.Y. 1995); In re
9 Heckathorn, 199 B.R. 188 (N.D. Okla. 1996); In re Oderkirk, 1995
10 W.L. 241338 (Bankr. D. Idaho 1995).

11
12 The court in Heckathorn states:

13 It is . . . entirely proper to read the exceptions to
14 discharge in § 523(a), including (8)(B) thereof, in light
15 of equity. While a bankruptcy court cannot, because of
16 its own notions of equitable principles, refuse to award
the relief which Congress has accorded the bankrupt, the
real question is, what is the relief which Congress has
accorded the bankrupt. . . ?

17 Heckathorn, 199 B.R. at 194 (citing Securities and Exchange Comm.
18 v. United States Realty & Improvement Co., 310 U.S. 434, 457
19 (1940)). Equity requires that the court balance two competing
20 Congressional interests - the debtor's "fresh start" and
21 Congressional concern with funding for the student loan system.
22 See Heckathorn at 195 (citing 3 Collier on Bankruptcy (Matthew
23 Bender - 15th Ed, 1996) ¶ 523.18). The partial dischargeability of
24 a student loan debt, to the extent its payment constitutes an undue
25 hardship, accomplishes both Congressional purposes by providing the
26 debtor with a fresh start while maximizing student loan repayments.

1 The Supreme Court has stated that when a literal application
2 of a statute produces "a result demonstrably at odds with the
3 intentions of the drafters . . . the intention of the drafters,
4 rather than the strict language controls." U.S. v. Ron Pair
5 Enterprises, Inc., 489 U.S. 242 (1989). An "all or nothing"
6 approach to § 523(a)(8)(B) would produce a result "demonstrably at
7 odds" with Congressional intention regarding the protection of the
8 debtor's fresh start and its intention to produce maximum student
9 loan collections. The allowance of a partial discharge furthers
10 these dual goals by requiring that a debtor with the ability to
11 make payments toward the debtor's student loan obligations continue
12 to be obligated to make payments up to the debtor's ability to do
13 so. Consequently, 11 U.S.C. § 523(a)(8)(B) should be read to mean
14 that a student loan debt which first became due within seven years
15 of the petition date is not dischargeable unless, and only to the
16 extent that, excepting such debt from discharge will impose an
17 undue hardship on the debtor and the debtor's dependents.
18

19 C. Amount of Discharge

20 The Debtor feels she can pay \$150 toward her student loan
21 obligations. In addition the court has identified other areas of
22 savings which may be paid toward the Debtor's loan obligations -
23 payments on the signature loan of \$92, payments to Meier & Frank of
24 \$80, elimination of the cable TV payment of \$35, and the end of
25 dental coverage of \$63. This produces an ability to pay \$420 per
26 month toward the loan obligations.

1 Because of variable interest rates on the loans issued to the
2 Debtor, an interest rate of 8.5% is deemed to be an appropriate
3 rate of interest to calculate the present value of a monthly
4 payment of \$420 over 10 years, the original term of the notes.
5 This produces an aggregate loan amount of \$_____ which the
6 Debtor can repay without causing her an undue hardship.

7 Because there is no rational basis for prioritizing the debts
8 of the three student loan creditors, the debts will be discharged
9 to the extent each debt represents its pro rata share of the amount
10 which exceeds that amount the Debtor can pay without undue
11 hardship. The total obligation to the three Defendants is
12 \$80,204.16. The nondischargeable amount of the obligation is
13 \$_____, leaving a dischargeable amount of \$_____ to be
14 distributed between the Debtor's three creditors. Accordingly,
15 judgment shall be entered discharging that portion of the
16 obligation of Portland State University which exceeds \$_____,
17 discharging that portion of the obligation of Hemar which exceeds
18 \$_____, and discharging that portion of the obligation of North
19 Star Guaranty which exceeds \$_____. Each of the debts shall
20 be decelerated and interest shall be calculated at 8.5% over the
21 term of ten years. All other terms of the notes shall remain as in
22 the original. Payment shall begin _____ days from the date of
23 judgment.
24
25

26 III. CONCLUSION

1 For the reasons discussed, the Debtor will be granted a
2 discharge of her student loans on a pro rata basis to the extent
3 payment of the aggregate of the loans imposes an undue hardship on
4 the Debtor and her dependent. Judgment consistent with this
5 opinion will be entered accordingly.
6
7
8

9 FRANK R. ALLEY, III
10 Bankruptcy Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26